

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 204/2007

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Bahin
06.10.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 204 / 2007
2. Miscellaneous Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(S) Smt. Mahanati Thapa & 34 ors -VS- Union of India & Ors

Advocate for the Applicants:- Mr. Adil Ahmed
Miss S. Bhattacharyee

Advocate for the Respondents:-

Addl. C.G.S.C Miss U. Das

Notes of the Registry	Date	Order of the Tribunal
<p>18.07</p> <p>34.9.654295</p> <p>12.6.07</p> <p>Registrar</p>	18.07	<p>The applicants, 35 in numbers are all Group 'D' employees working under the office of the Commanding Officer, 181 Military Hospital, C/o 99 APO and claims to be fulfilled the eligibility criteria were getting House Rent Allowance from 1.10.1986 onwards. Vide letter dated 16.10.2001 issued by the respondent No.2 issued to various Army units declared that HRA paid to the Defence Civilian Employees from 1.10.1986 to 7.09.1999 was irregular and directed to recover from the individual concerned after issuing show cause notice. But over the years upto 2005 they slept over the matter and all of a sudden they have started recovery from June 2007 without issuing any show cause notice and without affording any opportunity to the applicants. The grievance of the applicants is that HRA was granted to them by the respondents themselves and as per rule.</p>

Steps taken with
envelopes, an extra
charges for issuing
notices to the respondents
6 & 7 has deposited
vide Receipt No.
2349 dt 1.8.07.

Heard Mr A.Ahmed, learned counsel for the applicants and Miss U. Das, learned Addl.C.G.S.C for the respondents. The learned counsel for the respondents prays for three weeks time to take instruction.

0-A-204/07 -2

N

1.8.07

Considering the issue involved in this case 3 weeks time is granted to the counsel for the respondents to get instruction. In the interest of justice this Tribunal directs that the respondents shall not make any further recovery towards alleged over payment of House Rent Allowance till the next date.

Post on 24.8.07 for admission and further order.

Received
Alsha Das
Addl. case
24/8/07

Vice-Chairman

pg

24.8.07

Issue notice to the Respondents No.1 to 5 except Respondent No.4. The counsel for the respondents respondent No.4 will take the steps. The applicants will take steps for respondents No. 6 & 7. Interim order shall continue. Post the matter 26.9.07.

copy of OA
received with order
for R-4
Alsha Das
Addl. case
29/8/07

Vice-Chairman

lm

26.9.2007

Mr.A.Ahmed, learned counsel for the Applicant and Ms.U.Das, learned Addl. Standing Counsel for Central Government are present. Call this matter after six weeks awaiting reply from the Respondents.

Call on 14.11.2007. Interim order, which was passed earlier in this case shall continue to remain in force till the disposal of the case.

Notice and order
sent to D/Section
for issuing to
resp- nos. 1,2,3,5,6,7
by regd. A/D

post
D/No-889 to
894
Dt= 25/9/07

Notice duly served

on R-4. 25-9-07

21/9/07 - 1 Service report awaited.
2 No W.D.s. filed.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

3-
OA 204/07

order dt-26/9/07
issuing to learned
advocate's for both
the parties.

14.11.2007

No written statement has been filed
in this case as yet.

Call this matter on 04.01.2008
awaiting written statement from the
Respondents.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

8-11-07

① Notice duly served on R. G.
O'Hara and the service /bb/
② no W/S filed.

04. 01.2008

No Written Statement has been filed
in this case as yet.

Call this matter on 4th February,
2008 awaiting written statement from the
Respondents.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

04.02.2008

Written statement has been filed in Court
today after serving a copy on the learned
counsel appearing for the Applicant.

Subject to legal pleas to be examined at
the final hearing, this case is admitted. Liberty is
granted to the Applicant to file rejoinder by
04.03.2008.

Call this matter on 04.03.2008.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

15.2.08

W/S filed by the
Respondents. Service
copy served.

/bb/

①

OA 204/07

18.2.08

add. W/s submitted
in the Respondents copy
saved.

Qm

W/s filed.

3.2.08.

Rejoinder not
filed.

21.4.08.

Rejoinder not
filed.

19.5.08

04.03.2008 Mr.A.Ahmed, counsel appearing for the Applicant requested for more time to file rejoinder. Mr. G. Baishya, learned Sr. Standing Counsel Appearing for the Respondents ^{is also} present.

Call this matter on 22.04.2008 awaiting rejoinder from the Applicant.

lm

(Signature)
(Khushiram)
Member (A)

22.04.2008 On the request of Mrs. S. D. Choudhury, learned counsel appearing for the Applicant, the matter ~~be~~ listed for hearing on 01.05.2008.

(Signature)
(M.R.Mohanty)
Vice-Chairman

lm

01.05.2008 Mr.A.Ahmed, learned counsel appearing for the Applicant and Mr.G.Baishya, learned Sr.Standing Counsel appearing for the Respondents are present.

Counsel for the Applicant wants to file rejoinder. Let it be filed by next date.

Call this matter on 21.05.2008.

lm

(Signature)
(Khushiram)
Member(A)

O.A. 204 of 07

21.5.2008 In this case written statement has already been filed by the Respondents. Despite opportunities, the Applicant had chosen not to file their rejoinder.

Call this matter on 28.07.2008 for hearing, when; the Respondents should file cause production of Departmental Records for perusal.

Send copies of this order to the Applicant and the Respondents in the address given in the O.A. and free copies of this order be supplied to the learned counsel appearing for both parties.

(Khushiuram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

28.07.2008 On behalf of the Applicant a prayer has been made seeking adjournment.

Call this matter on 29.08.2008.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

nkm

O.A. 98 of 2008 (M.P. 82 of 08)

14.08.2008 Claim of the Applicants, to get family pension and other pensionary benefits,

DI. 21.5.08.

Pl. Send copies of this order to the Applicant and to the Respondents.

21/5/08

order dt. 21/5/08
send to D/Section
for issuing to
applicant and to
the respondents by
post.

Free copies of
this order handed
over to learned
counsel for both
parties.

2/6/08. D/NO-263770
DI- 2646
3/6/08.

W/S filed.

25.7.08

W/S filed.

3/8/08. 28.8.08.

✓

29.08.2008 Call this matter on 24th September 2008 for hearing.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

2.9.08

Rejoinder filed by
the Applicants against
W/S. Copy served.

24.09.2008 None appears for the Applicant. Mr.Adil Ahmed, learned counsel appearing for the Applicant, has sent a leave note. Mr.M.U.Ahmed, learned Addl. Standing counsel for the Union of India is however present.

Call this matter on 26.11.2008.

(S.N.Shukla)
Member (A)

(M.R.Mohanty)
Vice-Chairman

The case is ready
for hearing.

/bb/

23.9.08

The case is ready
for hearing.

26.11.2008 Call this matter on 20th January, 2009 for hearing.

(M.R.Mohanty)
Vice-Chairman

25.11.08

lm

20.1.09 Bench is not available.
List on 25.2.09 for hearing.

by
C.A.

The case is ready
for hearing.

24.2.09

The case is ready
for hearing.


3
16.3.09.

25.02.2009

O.A.204 of 07

hearing.

Call this matter on 17.03.2009 for


(M.R. Mohanty)
Vice- Chairman

lm

17.03.2009

Mr.N.Ahmed holding the brief of
Mr.A.Ahmed states that Mr.A.Ahmed is out of
station and prays for adjournment.

Prayer is accepted. Put up this case on
23.03.2009.

Khairel

19/3

The case is ready
for hearing.

3
20.3.09

/bb/

23.03.2009

Mr N. Ahmed, learned Advocate (who
represents Mr A. Ahmed, learned Counsel
appearing for the Applicant) is present.

Call this matter for hearing on
08.05.2009.


(M.R. Mohanty)
Vice-Chairman

nkm

The case is ready
for hearing.

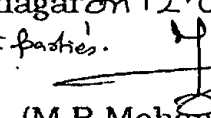
3
7.5.09.

14-5-2009

08.05.2009

Mr. A. Ahmed, learned counsel for
the Applicant is present. Ms. Usha Das,
learned Addl. Standing Counsel
representing the Respondents is present.

On consent of parties, call this
matter for hearing at Itanagar on 12.06.09
Send copies to both parties.


(M.R. Mohanty)
Vice-Chairman

Copy of The order

Dtd-8.5.09 prepared
and sent to D. Section
for Issuing to the
both parties.

Vide D.NO-24433^{lm} to 2442
Dtd. 18-5-09.

3
14

O.A.204/2007

02.06.2009

This case has been fixed (to 12.06.2009) to be taken up for hearing at Itanagar.

3.06.2009

Copy of the order

Dtd. 2.6.2009 prepared and send to D. Section for issuing of the both parties and learned Advocate for the parties.

Itanagar programme having been cancelled, this matter shall now be taken up at Guwahati on 12.06.2009.

Send copies of this order to both parties and to the Advocates of both parties.

(M.R. Mohanty)
Vice-Chairman

/bb/

Vide D.No.-2827/2868

Date: - 3.6.09.

12.06.2009

Mr. N. Ahmed, advocate is present on behalf of the Applicants.

Ms. Usha Das, learned Addl. Standing Counsel is present on behalf of the Respondents.

Before going for hearing of this case, it is found that Annexure-1 to the written statement is not legible one. Respondents should produce legible copy of Annexure-1 to the Written statement and all such documents ^{basing} ~~placing~~ on which ^{HRA} is being paid to the Applicants with effect from 1986. The authorities, under which House Rent Allowance were being paid to the Applicants, should be produced before we start the hearing of this case. Ms. Usha Das, learned Addl. Standing Counsel should make all endeavor to find out all notifications connected with ^{payment of} HRA to Civilian Personnel ^{at} ~~and~~ Armed Forces for an effective ^{facts} adjudication of the case. Respondents should give full assistance in the matter, well before the next date.


3.6.09.

confd

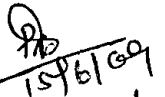
Contd/-
12.06.2009

Call this matter on 24th July
2009 for hearing.

Send copies of this order to
the Respondents and free copies of
this order be also supplied to the
learned counsel appearing for both
the parties.


(M.R. Mohanty)
Vice-Chairman

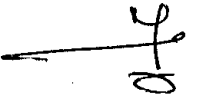
15.6.09
Send copies of this
order to the Respondents
and free copies to the Counsel
for both the parties, urgently.


15/6/09
Received
Usha Das
Addl. Cse
15/6/09. lm

24.07.2009

On the request of Ms.U.Das, learned
Addl. Standing counsel for the Respondents,
call this matter on 31.08.2009 for hearing.


(M.K. Chaturvedi)
Member (A)



(M.R. Mohanty)
Vice-Chairman

15.6.09
order dt. 12.6.09 send
to Dfs for issue the same
to the Respondents and free
copies to both the Counsel.

Note No — 3243 to 3250
dt — 17.6.09

31.08.2009

Call this matter on 21.10.2009 for
hearing.


(M.K. Chaturvedi)
Member(A)


(M.R. Mohanty)
Vice-Chairman

the case is ready
for hearing.

Lm.

21.10.2009

Ms. Usha Das, learned Addl.
Standing counsel appearing for
Respondents seeks some more time to
produce legible copies of the memorandum
relied upon in support of the defence taken.
Request is not opposed by Mr.N.Ahmed,
learned counsel for Applicant.

23.7.09
the case is ready
for hearing.

28.8.09

the case is ready
for hearing.

30.10.09

the case is ready for
hearing. 30.10.09

/bb/

List the matter on 03.11.2009.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

O.A. NO. 204/2007

~~03.11.2009~~

Heard Mr A. Ahmed, learned Counsel for
the Applicant and Ms U. Das, learned Addl.
C.G.S.C. Hearing concluded.

Orders reserved.

03.11.2009

Heard Mr A. Ahmed, learned Counsel
for the Applicant and Ms U. Das, learned Addl.
C.G.S.C. Hearing concluded.

Orders reserved.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

09.11.2009

Judgment pronounced in open court,
kept in separate sheets. O.A. is allowed. No
costs.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Received
Usha Das
Addl. Secy
08/12/09

Issue vide memo

No. 12836 P. 12841

dt- 08-12-2009

16.12.09

12

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.204 of 2007

DATE OF DECISION: 9th Nov 2009

Smti Madhumati Thapa and 34 others

.....APPLICANT(S)

Mr A. Ahmed

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

.....RESPONDENT(S)

Ms U. Das, Addl. C.G.S.C.

ADVOCATE(S) FOR THE
RESPONDENT(S)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

- | | |
|--|--------|
| 1. Whether reporters of local newspapers may be allowed to see the Judgment? | Yes/No |
| 2. Whether to be referred to the Reporter or not? | Yes/No |
| 3. Whether their Lordships wish to see the fair copy of the Judgment? | Yes/No |


Member (J)/Member (A)

13

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.204 of 2007

Date of Order: This the 9th day of November 2009.

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

1. Smti Madhumati Thapa
P No.484679,
Female Sweeper.
 2. Smti Kiran Bora
P No.483545
Female Sweeper
 3. Smti T.E. Khochulu
P No.486013m
Female Sweeper
 4. Miss Rinchin
P No.486011,
Female Sweeper
 5. Smti Khandamu
P No.486012,
Female Sweeper
 6. Smti Rupali Khabisow
P No.486861,
Ward Sahaika
 7. Smti T. Rema
P No.485967,
Ward Sahaika
 8. Smti Lobsang Droma
P No.485970,
Ward Sahaika
 9. Smti Pasang Rema
P No.485960,
Ward Sahaika
 10. Smti Konju Droma
P No.485689,
Ward Sahaika
- Jo

11. Miss Gauri Kumari
P No.486863,
Ward Sahaika
12. Miss Kalpana Rai
P No.486860,
Ward Sahaika
13. Shri Anand Bora
P No.6825534,
Chowkidar
14. Shri Tashi Phumiso
P No.6826852,
Chowkidar
15. Shri Avtar Singh
P No.6825531,
Chowkidar
16. Shri Sange Khandu
P No.6826834,
Chowkidar
17. Shri C.B. Mishra
P No.6825533,
Chowkidar
18. Shri P.C. Nath
P No.481283,
Mazdoor
19. Shri Jhapo Range
P No.486026
Mazdoor
20. Shri Sajal Paul
P No.6825539,
Cook
21. Shri Damber Bahadur
P No.6825540,
Cook
22. Shri Dawa Markapa
P No.6826824.
Cook
23. Shri Nurup Lama
P No.486004
Messenger
24. Shri Thung Jung
P No.486005
Messenger

25. Shri Nagender Thakur
P No.481292
Barber
26. Shri N.K. Thakur
P No.481291,
Barber
27. Shri Shiv Prasad
P No.481290,
Washer man
28. Shri M.D. Fazal
P No.481289,
Washer man
29. Shri Upendra Kumar Ram
P No.486862
Washer man
30. Shri Roop Narayan Ram
P No.486864,
Washer Man
31. Smti Bimla Lama
P No.481182,
Ward Sahaika
32. Shri M.K. Bora
P No.6827134
Civilian Safaiwala
33. Shri Govind Bahadur Chetri
P No.6827135,
Civilian Safaiwala
34. Shri J.B. Chetri
P No.481288,
Mali
35. Shri M.K. Bhagat
Carpenter

..... Applicants

All the applicants are working if the Office of the
Commanding Officer, 181 Military Hospital,
C/o 99 APO.

By Advocate Mr A. Ahmed

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Defence,
South Block, New Delhi-1.



2. The Head Quarter
5 Mountain Division (Med),
Pin-908405, C/o 99 APO.
 3. The Controller General of Defence Accounts
West Block-V,
R.K. Puram, New Delhi-66.
 4. The Controller of Defence Accounts
Udyan Vihar
Narengi, Guwahati-6781171.
 5. The Controller of Defence Accounts
Patna,
Ministry of Defence,
Post Office- Patna, Bihar.
 6. The Area Accounts Officer
Ministry of Defence Shillong
Bivar Road, Shillong-01.
- Respondents

By Advocate Ms U. Das, Addl. C.G.S.C.

.....

ORDER

MUKESH KUMAR GUPTA, JUDICIAL MEMBER


35 applicants, working in different capacities like Chowkidar, Sweeper, Majdoor, Messenger etc., in this O.A., challenge Office Orders dated 02.04.2007 and 22.05.2007, wherein respondent Nos.3 and 4 have taken steps to recover House Rent Allowance (HRA for short) paid to them during the period 01.10.1986 to 07.09.1999 without issuing any show cause notice or providing any prior opportunity of hearing. They also seek direction to respondents to refund the amount already recovered on aforesaid aspect with all consequential benefits.



2. Admitted facts are: that applicants working in various capacities in the Office of Commanding Officer 181 Military Hospital were paid HRA from 01.10.1986 to 07.09.1999. Vide letter dated 16.10.2001 it was alleged that payment of aforesaid allowance paid to Defence Civilian employees was irregular and various Army Units were required to provide details of payment made on aforesaid account. Based on said communication, impugned communications were issued and Commanding Officer 181 Military Hospital was directed to start recovery of overpaid amount. Hence present O.A.

3. Grievance of the applicants is that aforesaid communications dated 02.04.2007 as well as 22.05.2007 are ex facie illegal, malafide, arbitrary and without justification. No opportunity of hearing or show cause notice was issued prior to effecting recovery. They had not made any misrepresentation or committed any fraud in obtaining said HRA. Since there was no fault on their part, said recovery after a long lapse of time is unsustainable in the eyes of law. Respondents being a model employer cannot take advantage of its dominant position. Applicants belonging to a lower stratum of society cannot be made to suffer huge financial hardship for no fault of theirs, emphasized Mr. A. Ahmed, learned counsel appearing for the applicants.

4. Reliance was placed on (1994) 2 SCC 521, Shyam Babu Verma and others Vs. Union of India and others, wherein it was held that when official were paid higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount, which has already been paid to them. Said dictum has been followed in 2000



(2) GLP 516, Susama Acharjee (Smti) Vs. State of Tripura and others.

Thus it was prayed that present application deserves to be allowed.

5. By filing a reply, respondents raised preliminary objection that O.A. is unjust and unsustainable both in facts and in law. It suffers from non-joinder of necessary parties and misjoinder of unnecessary parties. It is also hit by the principles of waiver estoppel and acquiescence. On merits it was stated that payment of HRA to Defence Civilian employees in terms of Ministry of Finance letter dated 23.09.1986 for the period from 01.10.1986 to 07.09.1999 had been viewed irregular by Office of CGDA and advice was issued to recover the payment made on said account. Recovery of HRA was initiated since 16.10.2001, but due to administrative reasons it could not be started immediately. Learned counsel for the respondents contended that since applicants have been paid over and above their entitlement, they are not entitled to retain said benefits and any unjust amount paid to them is liable to recovered.

6. Ms U. Das, learned Addl. C.G.S.C. appearing for the respondents, placing reliance on 1997 (6) SCC 139, V. Gangaram Vs. Regional Joint Director and others, which had been followed in 2002 (2) SLR 452 (Rajasthan), Alam Ali Vs. State of Rajasthan, contended that since the applicants were paid certain allowance by mistake, they cannot object rectification of the mistake and consequent order of recovery.

7. We have heard Mr A. Ahmed, learned counsel for the applicants and Ms U. Das, learned Addl. C.G.S.C. appearing for the respondents, perused the pleadings and other materials placed on record. The law relating to recovery of excess payment made by the



Government is well settled. Hon'ble Supreme Court in 2007 (1) SCC (L&S) 529, Col. B.J. Akkara Vs. Government of India and others, on analyzing its earlier judgments in 1995 Supp (1) SCC 18, Sahib Ram Vs. State of Haryana; (1994) 2 SCC 521, Shyam Babu Verma Vs. Union of India; (1996) 4 SCC 416, Union of India Vs. M. Bhaskar and (1997) 6 SCC 139, V. Gangaram Vs. Regional Jt. Director, summarized the law and observed as under:

"The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/ understanding of the circular dated 7.6.1999. The Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled:

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employee from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."


(emphasis supplied)

f

8. Aforesaid law in our respectful view is squarely attracted in the facts of present case. We may, at the cost of repetition, note that it is not a case, either pleaded or made out by respondents that applicants were guilty of any misrepresentation or fraud in regard to excess payment made on account of HRA. This being the position, we find no justification in the impugned action of respondents in effecting recovery, particularly, when there has been no opportunity of hearing afforded to them. Applicants belonging to lower ranks certainly, would spend whatever emoluments were received by them for upkeep of their family and if impugned action of respondents is sustained in law, it would cause undue hardship to them.

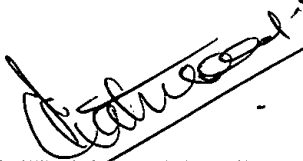
9. As far as reliance placed on V. Gangaram's case (supra) as followed in Alam Ali's case (supra) is concerned, we may note that V. Gangaram's case had been noticed by Hon'ble Supreme Court in Col. B.J. Akkara's case (supra) and yet it has been observed that excess payment paid for a long time would certainly be spent by the individual genuinely believing that he was entitled to and therefore, recovery of such excess amount would cause undue hardship. Therefore, we are of the view that reliance placed on V. Gangaram's case is of no help to respondents.

10. In the circumstances and for reasons noticed hereinabove, O.A. is allowed. We declare that respondents cannot recover HRA paid to them from 01.10.1986 to 07.09.1999. Since this Tribunal vide interim order dated 01.08.2007 have already restrained respondents

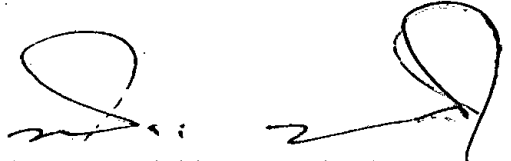


from taking any further steps to recover the amount paid on account of HRA no further order is required at this stage.

11. O.A. is accordingly allowed. No costs.



(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER.



(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

nkml

- 1 AUG 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

ORIGINAL APPLICATION NO. 204 OF 2007.

Smti Madhumati Thapa & 34 Others

... Applicants

-Versus-

The Union of India & Others

... Respondents

- I N D E X -

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Date: 01-08-2007.

Filed By:

Smita Bhattacharjee

Advocate

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.**

ORIGINAL APPLICATION NO. 264 OF 2007.

Smti Madhumati Thapa & 34 Others

... Applicants

-Versus-

The Union of India & Others

... Respondents

L I S T O F D A T E / S Y N O P S I S :

- | | |
|-------------------------|---|
| 16.10.2001 | The Applicants all Group D employees after fulfilling all the eligibility criteria were getting House Rent Allowance from <u>1.10.1986</u> onwards. However, vide letter dated 16.10.2001 the Respondent No.2 issued to various <u>Army</u> units declared that HRA paid to the Defence Civilian Employees from 1.10.1986 to 7.09.1999 is irregular and hence directed to initiate recovery against the individual concerned after issuing show cause notice.
<div style="text-align: right;">(Annexure-A)</div> |
| 15.11.2001 | Office of the Respondent No.2 requested all Army units to provide information regarding detailed payment of HRA and compensatory Field Area Allowance to Defence Civilian posted in newly defined field area.
<div style="text-align: right;">(Annexure-B)</div> |
| 7.3.2005 &
17.4.2005 | Office of the Respondent No.2 enclosing letter dated 7.3.2005 requested the Respondent No.7 to provide necessary information regarding payment of HRA to the Defence Civilians vide letter dated 17.4.2005.
<div style="text-align: right;">(Annexure-C)</div> |
| 21.5.2005 | Respondent No.7 submitted details of payment of HRA to the Defence Civilians stating thereby that 44 Defence Civilians were paid HRA from 1.10.1986 to 7.9.1999.
<div style="text-align: right;">(Annexure-D)</div> |
| 2.4.2007 &
22.5.2007 | Respondent No.4 letter dated 2.4.2007 wrote to Respondent No.3 stating therein that 181 Military |

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Hospital C/o 99 APO agreed to recover the alleged over payment of HRA from per individual amounting to Rs.28,581/-. The said Respondent vide letter dated 22.5.2007 directed the Respondent No.7 to intimate regarding recovery. As per the said letter Respondent No.7 started recover of the alleged over payment of HRA for the period from 1.10.1986 to 7.9.1999 from the month of June, 2007 onwards.

(Impugned orders – Annexures E & F Respectively)

The Respondents have started recovery of HRA from June, 2007 without issuing any show cause or without affording any opportunity to the Applicants. Hence this Original Application for seeking justice in this matter.

FILED BY

Smt. Madhumati Thapa
... Applicant No. 1
Through Smta Bhattercharya
(Advocate)
20

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI**

**(AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT 1985)**

ORIGINAL APPLICATION NO. 204 OF 2007.

BETWEEN

1. Smti Madhumati Thapa.
P No. 484679,
Female Sweeper
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO.
2. Smti. Kiran Bora
P No. 483545
Female Sweeper
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
3. Smti. T. E. Khochulu
P.No.- 486013
Female Sweeper
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
4. Miss Rinchin
P.No. 486011
Female Sweeper
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
5. Smti. Khandamu
P No. 486012
Female Sweeper
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
6. Smti. Rupali Khabisow
P No. 486861
Ward Sahaika
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

MADHU

7. Smti. T. Rema
P No. 485967
Ward Sahaika
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
8. Smti. Lobsang Droma
P No. 485970
Ward Sahaika
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
9. Smti. Pasang Rema
P No.- 485969
Ward Sahaika
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
10. Smti. Konju Droma
P No. 485689
Ward Sahaika
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
11. Miss Gauri Kumari
P No. 486863
Ward Sahaika
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
12. Miss Kalpana Rai
P No. 486860
Ward Sahaika
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
13. Shri. Anand Bera
P No. 6825534
Chowkidar
Office of the Commanding Officer
181 Military Hospital
14. Shri Tashi Phuntsu
P No. 6826852
Chowkidar

MADAO

Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

15. Shri. Avtar Singh
P No. 6825531
Chowkidar
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

16. Shri. Sange Khandu
P No. 6826834
Chowkidar
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

17. Shri C.B. Mishra
P No. 6825533
Chowkidar
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

18. Shri P.C. Nath
P No. 481283
Mazdoor
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

19. Shri Jhapo Range
P No. 486026
Mazdoor
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

20. Shri Sajal Paul
P No. 6825539
Cook
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

21. Shri Damber Bahadur
P No. 6825540
Cook
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

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22. Shri Dawa Markapa
P No. 6826824
Cook
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
23. Shri Nurup Lama
P No. 486004
Messenger
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
24. Shri Thung Jung
P No. 486005
Messenger
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
25. Shri. Nagender Thakur
P No. 481292
Barber
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
26. Shri N.K. Thakur
P No. 481291
Barber
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
27. Shri Shiv Prasad
P No. 481290
Washer man
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
28. Shri M. D. Fazal
P No. 481289
Washer man
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO
29. Shri Upendra Kumar Ram
P No. 486862
Washer man

MRDHO

Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

30. Shri Roop Narayan Ram
P No. 486864
Washer man
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

31. Smti Binla Laha
P No. 481182
Ward Sahaika
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

32. Shri M.K. Bora
P No. 6827134
Civilian Safaiwala
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

33. Shri Govind Bahadur Chetri
P No. 6827135
Civilian Safaiwala
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

34. Shri J.B. Chetri
P No. 481288
Mali
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

35. Shri M.K. Bhagat
Carpenter
Office of the Commanding Officer
181 Military Hospital
C/o 99 APO

... Applicants.

-AND-

MADHU

1. The Union of India,
Represented by the Secretary to the
Government of India Ministry of
Defence, South Block, New Delhi-1
2. The Head Quarter
5 Mountain Division (Med)
Pin- 908405
C/o 99 APO
3. The Controller General of
Defence Accounts
West Block- V
R.K. Puram,
New Delhi-66
4. The Controller of Defence Accounts
Udyan Vihar
Narengi,
Guwahati-6781171
5. The Controller of Defence Accounts
Patna
Ministry of Defence
Post Office- Patna,
Bihar.
6. The Area Accounts Officer,
Ministry of Defence Shillong
Bivar Road
Shillong-01
7. The Commanding Officer
181 Military Hospital
C/o 99 APO.

.... Respondents.

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

This application is made against the impugned office order No. PAY/6/HRA/CCA/VI dated 02/04/2007 and dated 22.05.2007 issued by the Respondent No. 3 and 4, whereby, recovery of House Rent Allowances were started to the Applicants without issuing any show cause notice or providing any opportunity to the Applicants to put forward their case.

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2. JURISDICTION OF THE TRIBUNAL :

The Applicants declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION :

The Applicants further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4. FACTS OF THE CASE :

Facts of the case in brief are given below:

- 4.1 That your humble Applicants are Indian Citizen by birth and as such they are entitled to get all the rights and privileges guaranteed under the Constitution of India.
- 4.2 That your Applicants beg to state that they are Defence Civilian Central Government employees and working as Female Sweepers, Ward Sahaika, Chowkidars, Mazdoors, Cooks, Messengers, Barbers, Washer-men, Civilian Safaiwalas, Mali and Carpenter, under the Office of the Commanding Officer 181 Military Hospital C/o 99 APO. They all belong to Group- D category.
- 4.3 That your Applicants begs to state that they have got common grievances, common cause of action and the nature of relief prayed for is also same and similar and hence and having regard to the facts and circumstances they intended to prefer this application jointly and accordingly they crave leave of this Hon'ble Tribunal under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules'1987 and pray that they may be allowed to file the joint application for redressal of their common grievances.
- 4.4 That your Applicants beg to state that under the various Government of India Circulars/ Memorandums/ Orders they were paid House

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Rent allowances since 1st October 1986 by the Respondents without any interruption. The same has been paid to the Applicants by the Respondents themselves as the Applicants have fulfilled all the criteria for eligibility of the House Rent Allowance. However, the Respondent No. 2 i.e. the HQ 5 Mountain Division vide their letter dated 16th October 2001 addressed to various Army units including 181 Military Hospital notified that as per Controller of Defence Accounts, Patna DO letter No. PA/017/XIV dated 31st July 2001 that the House Rent Allowances paid to the Defence Civilian employees from 1st October 1986 to 7th September 1999 is irregular. As such, recovery of House Rent Allowance from the Defence Civilian employees w.e.f. 1st October 1986 to 7th September 1999 to be initiated against the individual concerned after issuing show cause notice.

The photocopy of letter dated 16th October 2001 and CDA Patna DO letter No. DPA/1/017/XIV dated 31st July 2001 are annexed hereunto and marked as ANNEXURE-A.

- 4.5— That your Applicants beg to state that the Office of the Respondent No. 2 vide their letter dated 15th November 2001 requested all Army units including 181 Military Hospital regarding detailed payment of House Rent Allowances and Compensatory Field Area Allowances to Defence Civilians posted in newly defined Field Area.

The Photocopy of the letter dated 15th November 2001 is annexed hereunto and marked as ANNEXURE- B

- 4.6 That your Applicants beg to state that the Office of the Respondent No. 2 vide their letter No. 3537/R/M-3 dated 17th April 2005 enclosing the CDA Guwahati letter No. Pay/6/HRA/CCA/V dated 7th March 2005 requested the Respondent No. 7 i.e. 181 Military Hospital C/o 99 APO to provide necessary information regarding payment of House Rent Allowances to the Defence Civilians.

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The Photocopy of letter No. 3537/R/M-3 dated 17th April 2005 issued by the HQ 5 Mountain Division C/o 99 APO is annexed hereunto and marked as ANNEXURE- C.

- 4.7 That your Applicants beg to state that the Respondent No. 7 i.e. the 181 Military Hospital C/o 99 APO vide their letter No. 712/Est./05 dated 21 May 2005 addressed to 5 Mountain Division (Med) Pin-906405 C/o 99 APO submitted details of payment of House Rent Allowances to the Defence Civilians. It is to be stated that in the details of information the Respondent No.7 has stated that 181 Military Hospital C/o 99 APO has paid House Rent Allowances to the forty-four Defence Civilians w.e.f. 1st October 1986 to 7th September 1999 and also stated that the said amount can be recovered from individual salary.

The photocopy of Letter No.712/Est./05 dated 21 May 2005 issued by the 181 Military Hospital C/o 99 APO is annexed hereunto and marked as ANNEXURE-D.

- 4.8 That your Applicants beg to state that the Respondent No. 4 i.e. the Controller of Defence Accounts, Narengi Guwahati vide their letter No. Pay/6/HRA/CCA/VI dated 02-04-2007 addressed to Respondent No. 3 i.e. the Controller General of Defence Accounts, New Delhi has stated that the 181 Military Hospital C/o 99 APO has agreed to recover the over payment of House Rent Allowance from per individual amounting Rs. 28, 581/- (Rupees Twenty eight thousand five hundred eighty one) only. The copy of the said letter was also sent to Respondent Nos. 6 and 7. They were requested to start recovery of over paid amount through the pay bill under preparation and to monitor the case vigorously until its finality. Moreover, the Controller of Defence Accounts, Narengi, Guwahati vide their letter dated 22-05-2007 directed the Respondent No. 7 to intimate regarding action of the same. As per the said direction the Respondents have started to recover House Rent Allowance from the instant Applicants w.e.f. 1st October 1986 to 7th September 1999 without any prior notices. Hence finding no other alternative your

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Applicants are compelled to approach this Hon'ble Tribunal for seeking justice in this matter and also with a prayer for an interim order not to recover the House Rent Allowance from the Applicants w.e.f. 1.10.1986 to 07.09.1999 till disposal of this case.

The photocopy of the letter No. Pay/6/HRA/CCA/VI dated 02-04-2007 issued by the Controller of Defence Accounts, Narengi Guwahati is annexed hereunto and marked as ANNEXURE-E.

The photocopy of the letter dated 22-05-2007 issued by the Controller of defence Accounts, Narengi, Guwahati, is annexed hereunto and marked as ANNEXURE- F.

4.9 That your applicant begs to state that the recovery of House Rent Allowance was initiated by the Respondent No.2 since 16.10.2001 in pursuance of the letter dated 31.07.2001 issued by the CDA, Patna i.e., Respondent No.5. in the said letter it is also made clear that recovery will be initiated after show cause to the individual concerned. However, in the instant case, the Respondents have started recovery of the House Rent Allowance from the Applicants from the month of June, 2007 onwards without issuing any show cause notice to the Applicants. Moreover, the recovery order was issued after six years of initiation of recovery process by the Respondents themselves. The impugned orders No.PAY/6/HRA/CCA/VI dated 02/04/2007 and dated 22.05.2007 have been issued by the Respondent No. 3 and 4 without providing any opportunity to the Applicant to defend themselves. Therefore, the impugned orders are liable to be set aside and quashed only on the ground of total violation of principles of natural justice.

4.10 That your Applicants beg to state and submit that the House Rent Allowance w.e.f. 1.10.1986 to 07.09.1999 was paid by the Respondent Authorities not on the misrepresentation of the Applicants but on their own. The said amount has already been spent by the Applicants for maintaining their family members. They have

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not obtained the said Allowance fraudulently or forcefully, rather the allowance was paid to the Applicants by the Respondents themselves. The present Applicants cannot be held responsible since they have no hand in the matter of sanction or discontinuation of the said allowance. It will cause great financial hardship to the Applicants if the same is allowed to be recovered from the Applicants.

4.11 That your Applicants beg to state and submit that the said House Rent Allowance was received by the Applicants from 1986 i.e., more than twenty years back. Now, the Respondents cannot take advantage by issuing the impugned recovery order. Moreover, the process of recovery was started six years back and the Respondents were totally silent for all these long years. Hence, the impugned recovery orders are not sustainable in the eyes of law. As such, the same are liable to be set aside by this Hon'ble Tribunal.

4.12 That the impugned action on the part of the Respondents Authorities in issuing the recovery of House Rent Allowance has the effect of meting out arbitrary treatment to the Applicants and further subjecting the Applicants to malafide exercise of power by the Respondent Authorities, the rights of the Applicants guaranteed under Articles 14, 16 and 21 of the Constitution of India have been infringed with.

4.13 That your Applicants demanded justice and the same has been denied.

4.14 That this application is filed bonafide and for the cause of justice..

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, due to the above reasons and facts, which are narrated in details, the action of the Respondents is prima facie illegal, malafide, arbitrary and without justification. As such the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.

MD DHU

- 5.2 For that, the Respondent Nos.2 & 5 in their communications dated 16.10.2001 and 31.07.2001 respectively have directed the authority concerned to issue show cause notice to the Applicants before initiating recovery of House Rent Allowance. However, the Respondent Nos.3, 4 & 7 flouting the above instructions have started recovery of the House Rent Allowance. As such, the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.
- 5.3 For that, the impugned orders are issued without providing any opportunity to the Applicants and no show cause notice, whatsoever, was issued to the Applicants before starting recovery of the House Rent Allowance. As such, the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are hit by the principles of natural justice. Therefore, the impugned orders are not sustainable in the eyes of law.
- 5.4 For that, the Applicants did not commit any fraud and misrepresentation in obtaining the said House Rent Allowance. As such, the Respondents are not entitled to recover the same from the Applicants for no fault of their own. Therefore, the impugned order PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.
- 5.5 For that, the action on the part of the Respondents for recovery of House Rent Allowance after more than 20 (twenty) years and also in initiation of the process for last six years is also not sustainable in the eyes of law. As such, the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.
- 5.6 For that, being a model employer the Respondent cannot take advantage of its dominant position over the Applicants in recovering the House Rent Allowance from the poor Applicants. As such, the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and

Map 40

PAY/6/HRA/CCA/VI dated 22.05.2007 are not maintainable and therefore, liable to be set aside and quashed.

- 5.7 For that, the Applicants have already spent the entire amount in maintaining their families. If the Respondents are allowed to recover the House Rent Allowance drawn during the period from 1.10.1986 to 07.09.1999, i.e, for almost 13 years, the poor Applicants (Group-D) will suffer huge financial hardship for no fault of their own. Therefore, the impugned orders recovering the House Rent Allowance drawn from 1986 onwards to 1999 are bad in law. As such, the impugned orders PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.
- 5.8 For that, the action of the Respondents in recovering the House Rent Allowance is arbitrary, malafide, illegal and with illmotived. Therefore, the impugned orders are liable to be set aside and quashed.
- 5.9 For that, in any view of the matter the action of the Respondents are not sustainable in the eye of law.

The Applicants crave leave of this Hon'ble Tribunal advance further grounds the time of hearing of this instant application.

6. DETAILS OF REMEDIES EXHAUSTED :

That there is no other alternative and efficacious and remedy available to the Applicants except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

That the Applicants further declare that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any such application, writ petition or suit is pending before any of them.

MDDHU

8. RELIEF PRAYED FOR :

Under the facts and circumstances stated above, the Applicants most respectfully prayed that Your Lordships may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the Applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relief (s) : -

- 8.1 That the Hon'ble Tribunal may be pleased to set aside and quash the impugned office order No. PAY/6/HRA/CCA/VI dated 02/04/2007 passed by the Respondent No.3 and PAY/6/HRA/CCA/VI dated 22.05.2007 passed by the Respondent No.4.
- 8.2 That the Hon'ble Tribunal may be pleased to direct the Respondents to refund the House Rent Allowance which has already been recovered from the Applicants.
- 8.3 To Pass any other relief or relieves to which the Applicant may be entitled and as may be deem fit and proper by this Hon'ble Tribunal.
- 8.4 To pay the costs of the application.

9. INTERIM ORDER PRAYED FOR :

During the pendency of this application, the Applicants most respectfully pray for the following relief : -

- 9.1 That the Hon'ble Tribunal may be pleased to stay the operation of the impugned orders issued under office order No. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 till disposal of this Original Application.

MADHU

10. THIS APPLICATION IS FILED THROUGH ADVOCATE.

11. PARTICULARS OF I.P.O.

I.P.O. No. :- 346654295

Date of Issue :- 12-06-2007

Issued from :- Guwahati G.P.O

Payable at :- Guwahati.

12. LIST OF ENCLOSURES:

As stated in index.

Verification

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VERIFICATION

I, Smti Madhumati Thapa, Wife of Shri Jang Bahadur Chetri, P No. 484679, Office of the Commanding Officer 181 M H C/o 99 APO do hereby solemnly verify and declare that I am the Applicant No. 1 of the instant Original Application and I am duly authorized by the other Applicants to sign this verification.

That the statements made in paragraph nos. 4.2 to 4.3, 4.9 to 4.14 — are true to my knowledge, those made in paragraph nos. 4.4 to 4.8 — are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the ...1st... day of ..August.. 2007 at Guwahati.

M D H O
DECLARANT

ANNEXURE- A

(Typed Copy)

505 ASC Bn
181 M H
5 Mtn DOU
238 Transit Camp
GE 859 EWS
384 Coy ASC (SUP)
482 Coy ASC (SUP)
Stn HQ Tenga

IIQ 5 Mtn. Div
C/o 99 APO

16 Oct 2001

PAYMENT OF IIRA AND COMPENSATORY MOD FD AREA ALLCES TO
DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS.

1. A copy of CDA Patna DO letter No. PA/1/017/XIV Dt. 31 July 2001 on the subject is fwd herewith.
2. It has been intimated by CDA Patna that Def. Civs. Posted to field areas are entitled to (HRA) provided they are not retaining accn. at previous duty station (and) not provided with Government Accn. in the newly defined field areas. Vide GOI, MOD letter 4(2)/99- D(Civ-1) dated 8th Sept. 1999 the provisions of payment of HRA. To Def. Civs. employees was w.e.f. 8th Sept. 1999. However, on a number of cases Def Civs. have been paid HRA from 1st Oct. 1986 to 7th Sept. 1999 which is irregular. ✓
3. In this connection, the following information is to be furnished by the units fmn. for in modified field areas in order to work out over payment:-
 - a) The number of employees who have been admitted HRA w.e.f. 1st Oct. 1986 and subsequent dates depending upon the date of posting to modified field areas, who have not been retaining the Family Accn. at the old duty station.
 - b) The number of employees who have been admitted HRA w.e.f. 1st Oct. 1986 and subsequent dates depending upon the dates posting to modified field areas, who have not been retaining the Family Accn. at the old duty station.
4. Compensatory Field Area Allowances (CMFAA) has been paid to Def. Civs. serving in the modified field areas which has also been viewed as

ATTESTED

Bhalla
ADVOCATE

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irregular as the provision of GOI, MOD letter No. 37269/AG/PS-3(a)/90 (Pay/Services) dated 13 Jan. 1994 were only applicable to Army pers.

5. In view of the foregoing, you are requested to examine both the case in detail and issue necessary instruction to concerned units/ finns. to work out the details of the amount paid to Def. Civs. On account of HRA prior to 8th Sept. 1999(i.e. 1st Oct. 1986 to 07 Sept. 1999) and also compensatory modified field area allowances paid after 13th Jan. 1994 and initiate recovery action after issue of show cause to the individual concerned.
6. Please fwd. A feed back by the 22 Oct. 2001 positively.

ATTESTED

Bhatta
ADVOCATE

(Typed Copy)

Copy of CDA Patna DO letter No. PA/1/017-XIV dated 31 July 2001

This is regarding payment of IIRA and compensatory Modified Field Area allowance the civilians posted in newly defined Field Areas.

In this connection I am to state that in terms of Para 2 of Govt. of India Min. of Defence letter No. 4(2)/99D(Civ-1) dt. 08 Sept. 1999, the Defence Civilians employed in Modified Field Areas are entitled to HRA provided they are not retaining Govt. accommodations at peace duty station with reference to Govt. of India, Min. of Defence letter No. ibid dt. 02 March 68 and are not also provided with Govt. Accommodations in the newly defined Field Area. Now it has been observed by our HQrs. Office (CGDA) that the order of Min. of Defence does not contemplate payment of HRA at the duty station in modified Field Areas prior to 08 Sep. 1999. It has also been pointed out by our HQrs. Office that HRA applicable in unclassified areas has been admitted in certain areas in terms of Min. of Fin. Letter No 13-02-86-E-II(B) dt. 23rd September 1986. Therefore the payments of HRA prior to 08 Sep. 1999 (i.e. from 01 Oct. 1986 to 07 Sep 1999) have been viewed as irregular.

In this connection the following information is to be furnished by the units/formations located in Modified Field Areas in order to work out over payments.

- (i) The number of employees who have been admitted HRA w.e.f. 01 Oct. 86 and subsequent dates depending upon the date of posting to modified Field Area who had not been retaining the family accommodation at the old duty station.
- (ii) The number of employees who have been admitted HRA w.e.f. 01 Oct. 86 and subsequent dates depending upon the date of posting to modified Field Area who had not been retaining the family accommodation at the old duty station.

It is further added that compensatory Modified Field Area Allowance (CMFAA) has been paid to Defence Civilian serving in Modified Field Area which have also been viewed as irregular as the provisions of Govt. of India, Min. of Defence letter No. 37269/AC/PS 3(a)/90 (Pay/Services) dt. 13 Jan 94 was only

ATTESTED

Bhatter

ADVOCATE

applicable for Army Personnel. As an instant case the unauthorized payments of Modified Field Areas Allowance which was made to the civilians of GE EWS have come to our notice.

In view of foregoing, I would request you to get both the cases examined in detail by your HQ are issue necessary instructions to concerned units/formations to work out the details of the amounts paid to Defence Civilians on account of HRA prior to 08 Sept. 1999 (i.e. 01 Oct. 86 to 07 Sept.99) and also compensatory Modified Area Allowance paid after 13 Jan 94 and initiate recovery action after issue of show cause notice to the individual concerned. It is also stated that this office is not in a position in identify the units/ formations where such irregular payments have been made in spite of our best efforts made in this regard.

Sd/-.

ATTESTED

Bhatte
ADVOCATE

46

This is regarding payment of HRA and compensatory Modified Field Area allowance the civilians posted in newly defined Field Areas.

In this connection I am to state that in terms of para 2 of Govt of India, Min of Defence letter No 402/290(civ-1) dt 08 Sep 99, the Defence Civilians employed in Modified Field Areas are entitled to HRA provided they are not retaining Govt accommodations at their duty station with reference to Govt of India, Min of Defence letter ibid dt 02 Mar 99 but it is not also provided with Govt accommodation in the newly defined field Area. Now it has been observed by our office that the order of Min of defence does not contemplate payment of HRA at the duty station in Modified Field Areas prior to 08 Sep 99. It has also been pointed out by our office that HRA applicable in unclassified areas has been admitted in certain areas in terms of Min of Fin. letter No 13-02-B6-E-11(B) dt 23 Sep 96. Therefore the payments of HRA prior to 08 Sep 99 (i.e from 01 Oct 86 to 07 Sep 99) have been viewed as irregular.

In this connection the following information is to be furnished by the units/formations located in Modified Field Area in order to work out over payments.

- ✓ (i) The number of employees who have been admitted HRA w.e.f 01 Oct 86 and subsequent dates depending upon the date of posting to modified Field areas who have not been retaining the family accommodation at the old duty station.
- ✓ (ii) The number of employees who have been admitted HRA w.e.f 01 Oct 86 and subsequent dates depending upon that date of posting to Modified Field Areas who have not retained the family accommodation at the old duty station.

It is further added that compensatory Modified Field Area Allowance (CMFAA) has been paid to Defence Civilians serving in Modified Field Area which have also been viewed as irregular in the provisions of Govt of India, Min of Def letter No 37269/AC/PS3(a)/20 (Pay/Services) dt 11 Jan 94 was only applicable for Army Personnel. As an instant case the unauthorised payments of Modified Field Area allowance which was made to the civilians of GE 667 EWS have come to our notice.

In view of foregoing, I would request you to get both the cases examined in detail by your HQ and issue necessary instructions to concerned units/formations to work out the details of the amounts paid to Defence Civilians in account of HRA prior to 08 Sep 99 (ie, 01 Oct 86 to 07 Sep 99) and also recommend appropriate Modified Field Area Allowance paid after 08 Sep 99 and initiate recovery action after issue of show cause notice to the individual concerned. It is also stated that this office is not in a position to identify the units/formations where such irregular payments have been made inspite of our best efforts in this regard.

ATTESTED

S. Shetty
ADVOCATE

11/11/01 Y K X XX

18/11/01

-23-

HQ 5-Mtn Div
C/O-99 APO

ANNEXURE-- B

W7

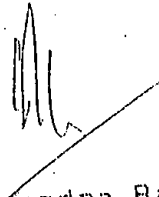
Nov 2001

A2

05 ASC Bn
482 Coy ASC (Sup)
181 Mil Hosp
GE 859 EWS

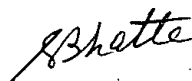
PAYMENT OF HRA AND COMPENSATORY MOD FD AREA ALLCES
TO DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS

1. Ref our letter No 7703/A2 dt 16 Oct 2001 and your replies thereon.
2. You are requested to find out details as per annex att to this letter by 17 Nov 2001.


(Virendra Rawat)
Lt Col
AAG
for Col Adm

Encl : As above.

ATTESTED


ADVOCATE

PAYMENT OF DUTY STATION HRA MADE TO DEFENCE CIVILIAN IN MODIFIED FIELD AREA
PRIOR TO 08 SEP 1995

S/No	Name of Unit	Individual with particulars to whom duty station HRA was paid prior to 08.09.95	Place from where posted which payment is being made	Period from which such payment is being made	Whether individual is retaining Govt accommodation at old duty station in peace area.	Total amount of HRA paid upto 7.9.95	Remarks

ATTESTED
S. Shetty
ADVOCATE

ANNEXURE- C

(Typed Copy)

3537/R/M-3

181 M H

C/o 99 APO

IIQ 5 Mtn. Div.

Pin-908405

C/o 99 APO

17th April 2005

PAYMENT OF Fd. SERVICE CONCESSION

DUTY STATION HRA TO DEF.CIV.

A Copy of CDA Guwahati letter No. PAY/6/HRA/CCA/V dated 07th March 2005 on the above subject is fwd. Herewith for your further necessary action please.

Sd/-

(T.S. Ramakrishnan)

Major

DADII

For ADMS

Encls. As above

Copy of CDA Ghy Letter No. Pay/6/HRA/CCA/V dt. 07th March 2005.

/As above/

Payment of HRA to Defence Civilians Serving in operational areas and even to those retaining Govt. Accn. at old peace duty station since Oct. 1986 is not in keeping with the Government orders. The matter has been examined in details in MOD (FIN) and Ministry of Finance necessary construction may please be issued to all concerned to stop payment of HRA to those defence Civilians who are serving in operational area and retaining Govt. Accn. at old peace duty station immediately.

However the following information may please be furnished on priority for taking up the matter with MOD by CGDA New Delhi.

1. Number of units involved.

ATTESTED

Abhette

ADVOCATE

2. Number of individuals who have been admitted IIRA prior to 08.09.1999 in the modified field area.
3. Total Financial Implication in this regard.
4. Period of overpayment on account of IIRA in modified field areas.
5. Views whether recovery of HRA can be made from the salaries of the individual under the order of CFA.

An immediate reply would be highly appreciated

Sd/-

(C.Zothankhuma)

Joint Controller

ATTESTED

S. Bhatte

ADVOCATE

ANNEXURE- D

(Typed Copy)

712/Est./05

5 Mtn. Div. (Med)

Pin-908405

C/o 99 APO

181 M II

C/o 99 APO

21 May 2005

PAYMENT OF Fd. SERVICE CONCESSION
DUTY STATION HRA TO DEFENCE CIVILIANS.

1. Ref your IIQ letter No. 37/R/M-3 dt.17 April 2005
2. The requisite information on the subject as asked vide your letter under ref. is submitted as under for your further necessary action please.
 - a) Number of units involved- One (181 M II C/o 99 APO)
 - b) Number of individuals who have been admitted HRA prior to 08-09-99 in Modified Field Area - Forty four
 - c) Total financial implication in this regard- Rs. 3,67,128/- (Three Lakhs Sixty Seven Thousand One hundred Twenty Eight) only.
 - d) Period of over payment on account of HRA in the modified field areas - 01 Oct. 1986 to 07 Sept. 1999.
 - e) Views recovery of HRA can be made- Yes from the salaries of the individual under the order of CFA.

Sd/-

(Y.R. Raina)

Major

Administrative Officer.

ATTESTED

S. Shetty
ADVOCATE

-28- Speed post
No. PAY/6/HRA/CCA/VI
O/o THE CDA,
"Udayan Vihar", Narangi,
Guwahati- 781171.
Dated: -02/04/2007.

ANNEXURE-- E

To,
The C.G.D.A.
West Block - V,
R.K. Puram,
New Delhi -66.

Sub: Field Service Concession (Duty station HRA) to Defence
Civilians in Defence operational area.

Ref: HQrs office letter no. AT/II/2366/FSC-XII dated 11/12/2006.

In this connection it is stated that the matter was referred to 181 Military
Hospital, C/O 99 APO for recovery of overpayment of HRA and they have agreed
to affect recovery.

Out of the total individuals three of them have expired and the recovery
amount due comes to Rs 28581/-. For this the executive authority will have to
initiate action to write off the amount. Further communication on the above issue
will be communicated on receipt of information from 181 Military Hospital and
AAO Shillong please. ✓

CDA has seen.

30/1/-
(P.R. Biswas)
DCDA (Pay)

Copy to,

1. The C.O.
181 Military Hospital
C/O - 99 APO.

2. AAO Shillong,
Bivar Road,
Shillong - 01

With reference to his letter no. 711/ESTT/2007
dated 11/01/2007, he is requested to start recovery
of the over paid amount through the pay bill under
preparation.

He is also requested to monitor the case
vigorously until its finality.

(P.R. Biswas)
DCDA (Pay)

ATTESTED

Bhalla
ADVOCATE

ANNEXURE- F

(Typed Copy)

Speed Post

No. PAY/6/IIRA/CCA/VI

O.O. the CDA, Guwahati

Narengi, Guwahati-171

Dated 22.5.2007

To,

The Commanding Officer

181 Military Hospital

C/o 99 APO

Sub:- Field Serving Concession (Duty Station IIRA) to Defence Civilians in
Defence Operational Area

Ref:- Your Office letter No. 711/ESTT/2007 dated 11.01.2007 and this office
letter no. PAY/6/IIRA/CCA/VI dated 02.04 2007

Please intimate regarding action taken to write off or otherwise the
amount of Rs. 28,581.00 (Para 2(a) of your letter refers).

It may also please be intimated as regards Para 2 (b) in respect of
individuals who transferred out for Rs. 30,813.00 and Para (b) of your letter
in respect of individuals serving in your office for Rs. 3,07,734.00 at an
early date.

The case may please be looked into at your level and furnish the
reply through 'Fax' so that the position can be appraised accordingly to our
HQR. Office, New Delhi.

Sd/-

Sr. Accounts Officer (Pay).

ATTESTED

Bhatter
ADVOCATE

-30-
Specimen

No. PAY/6/HRA/CCA/VI
D.O. The CDA, Chandabali
Murangi, Chandabali. 171
Dated 02.04.2007.

To:

The Commanding Officer
181 Military Hospital
c/o 99 A.P.O

ANNEXURE-- F

Subj: Field Service Concession (Daily Station HRA) to
Defence Civilians in Defence Operational area.

Ref: Your office letter no. 711/ESTT/2007 dated
11.01.2007 and this office letter no. PAY/6/HRA/CCA/
VI dated 02.04.2007. x

Please intimate regarding action taken to write off
or otherwise the amount of Rs. 2,581.00 (Para 2(a) of your
letter refers).

It may also please be intimated as regards para 2(b)
in respect of individuals who transferred out for Rs. 30,813.00
and para (b) of your letter in respect of individuals serving in your office
for Rs. 3,07,734.00 at an early date.

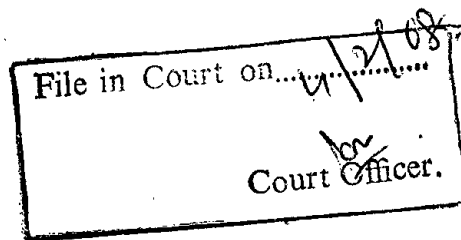
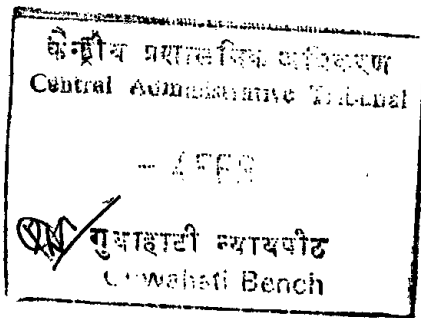
The case may please be looked into at your level
and furnish the reply through 'Fax' so that the position can
be apprised accordingly to our Hq. office, New Delhi.

Sr. Accounts Officer (Pay)

1986 to 1999

After 7 years
without notice

ATTESTED
Shette
ADVOCATE



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Title of the case :

OA No 204 of 2007

BETWEEN

Smti. Madhumati Thapa & others
AND

..Applicants.

UNION OF INDIA & ORS

.....RESPONDENTS

WRITTEN STATEMENT SUBMITTED BY THE RESPONDENTS

I N D E X

Sl No. Page No.	Particulars	
1.	Written statement	1-4
2.	Verification	5
3.	Annexure-1	6,7
4.	Annexure-2	8
5.	Annexure-3	9
6.	Annexure-4	10
7.	Annexure-5	11,12
8.	Annexure-6	13, 14
9.	Annexure-7	15
10.	Annexure-8	16

Filed by : *Usha Das*
Miss Usha Das
Addl CGSC

Date : 04/02/08

Recd
4.2.2008
Advocate

গুৱাহাটী কেন্দ্রীয়
Guwahati Bench
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

OA NO. 204/2007

Smti. Madhumati Thapa & others

..... Applicants

- Versus -

Union of India & Others

..... Respondents

-AND-

IN THE MATTER OF

Written Statement submitted by the Respondent No
1 to 7

WRITTEN STATEMENT :


The humble answering respondents submitted their

Written statement as follows:

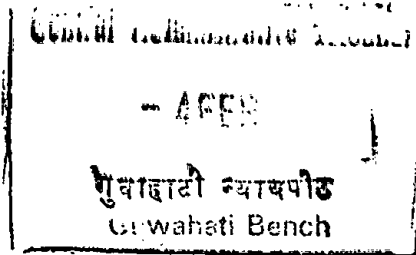
1 (a) That I am Colonel Vinay Lal, aged about 51 years
..... Commanding Officer, 181 Military Hospital
..... C/O 99 APO and respondent No 7 in the
above Case. I have gone through a copy of the application served on me and have
understood the contents thereof. Save and except whatever is specifically admitted in this
written statements, the contentions and statements made in the application and
authorized to file the written statement on behalf of all the respondents.

- (b) The application is filed unjust and unsustainable both facts and in law.
- (c) That the application is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.
- (d) That the application is also hit by the principles of waiver estoppels and acquiescence and liable to be dismissed.

Received Copy
Advocate
4.2.2008


(Vinay Lal)
Colonel
Commanding Officer

Filed by
the Respondents through
Asha Das,
Addl Encl
04/02/08



(e) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicants had suffered from vice of illegality.

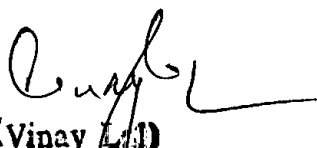
2) That with regard to the statement made in paragraphs 1, 2, 3, 4, 4.1, 4.2 and 4.3 of the OA, the answering respondents do not admit anything except those are based on records. The applicant is put to the strictest proof thereof.

3) That with regard to the statement made in paragraph 4.4 of the OA, the answering respondents beg to submit that the payment of HRA to Defence Civilian of this unit was admitted in terms of Ministry of Finance letter No. 13-02-86-E-II dated 23 September 1986 prior to 08 September 1999 i.e for the period from 01.10.1986 to 07.09.1999, the same had been viewed irregular by the office of the CGDA and the intimation to this effect was communicated vide CDA Patna DO letter No. PA/1/017/XIV dated 31.7.2001 received through HQ 5 Mtn Div 'A' letter No. 7703/A2 dated 16.10.2001. The authority of admissibility of house rent in this station prior to 08.1999 has not found in this office.

Copies of the letter dated 23.9.1986; 08.9.1999.
31.7.2001 and 16.10.2001 are annexed herewith
and marked as Annexure -1, 2, 3 and 4 respectively.

4) That with regard to the statement made in paragraph 4.5 of the OA, the answering respondents beg to submit that the details of payment of HRA paid wef 01.10.1986 to 07.9.1999 were sought through HQ 5 Mtn Div (A) vide their letter No. 7702/A2 dated 15.11.2001 and the same were submitted vide this office letter No. 711/Est/2001 dated 17.11.2001.

Copies of the letter dated 15.11.2001 and 17.11.2001
are annexed herewith and marked as Annexure-5
and 6 respectively.


(Vinay Lal)
Colonel
Commanding Officer

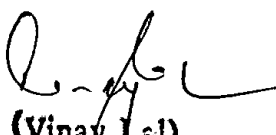
5) That with regard to the statement made in paragraph 4.6 of the OA, the answering respondents beg to submit that HQ 5 Mtn Div (Med) vide their letter No. 3537/R/M-3 dated 17.4.2005 circulated CDA Guwahati letter No. Pay/6/HRA/CCA/V dated 07.3.2005 stating to furnish the details of HRA paid to Defence Civilian employees serving in operational areas and even to those retaining Govt accommodation at old peace duty station since October 1986 as the same is not keeping with the Govt. orders. The details information was submitted to HQ 5 Mtn Div (Med) vide this hospital letter No. 711/Est/2005 dated 21 May 2005.

Copies of the letter dated ~~07.3.2005~~; 17.4.2005 and 21.5.2005 are annexed herewith and marked as Annexure-7, 8 and 9 respectively.

6) That with regard to the statement made in paragraph 4.7 of the OA, the answering respondents beg to submit that this hospital has to submit views under which recovery of the over payment of House Rent allowance w.e.f. 01.10.1986 to 07.9.1999 can be made, as there is no other way to make the recovery over payment of HRA. The respondents have agreed to recover the over payment of HRA through salaries as asked under CDA Guwahati letter No. Pay/6/HRA/CCA/V dated 07.3.2005.

7) That with regard to the statement made in paragraph 4.8 of the OA, the answering respondents beg to submit that this hospital has to follow the instruction, which are given by the HQs, and as per CDA Patna DO letter No. PA/1/017/XIV dated 31.7.2001 received through HQ 5 Mtn Div 'A' letter No. 7703/A2 dated 16.10.2001, stated that the House Rent allowance paid prior to 08.09.1999 has been viewed irregular by the higher authorities.

8) That with regard to the statement made in paragraph 4.9 of the OA, the answering respondents beg to submit that the recovery of House Rent Allowance was initiated since 16.10.2001. Due to administrative reasons recovery could not be started. Then a copy of the CDA letter No. PAY/6/HRA/CCA/V dated 07.3.2005 received vide HQ 5 Mtn Div (Med) letter No. 3537/R/M-3 dated 17.3.2005 seeking the information of the over payment of House Rent allowance. This Hospital has forwarded the information to HQ 5 Mtn Div (Med) this hospital letter No. 711/Est/2005 dated 21 May 2005.


(Vinay Lal)
Colonel
Commanding Officer

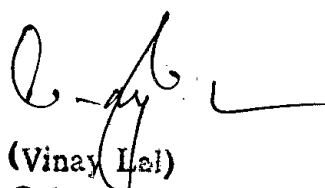
This information then forwarded to the office of the CDA Guwahati vide HQ 5 Mtn Div (Med) letter No. 3537/2/M-3 dated 25.5.2005.

That with regard to the statement made in paragraphs 4.10 and 4.11 of the OA, the answering respondents beg to offer no comment.

9) That with regard to the statement made in paragraph 4.12 of the OA, the answering respondents beg to submit that this hospital has forwarded the details of the over payment of the House Rent allowance time to time as asked for and followed the instructions directed by the Higher authorities. In this case no arbitrary treatment to the applicants or malafide exercise of the power has been by the authorities. However for the convenient of the Civilian employees of this hospital, the recovery of the over payment has been made in installments.

10) That with regard to the statement made in paragraphs 4.13 and 4.14 of the OA, the answering respondents beg to offer no comment.

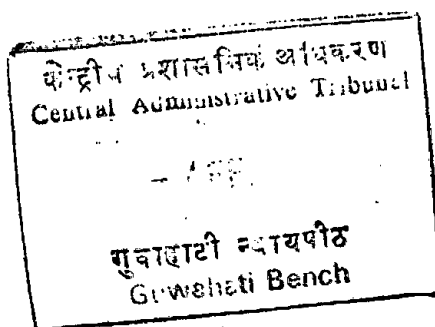
11) That the answering respondents submit that in view of the facts and circumstances of the case and the submissions made above, the application is devoid of any merit and without any rational/legal foundation and as such liable to be rejected/dismissed with costs for the ends of justice and equity.


(Vinay Lal)
Colonel
Commanding Officer

5 -

60

VERIFICATION



I, Colonel Vinay Lal, aged
about 51 years at present working as
Commanding Officer, 181 Military Hospital
e/099APB, who is one of the respondents and taking steps in this case, being
duly authorized and competent to sign this verification for all respondents,
do hereby solemnly affirm and state that the statement made in paragraph
1, 2, 12 are true
to my knowledge and belief, those made in paragraph
3 to 11 being matter of records, are
true to my information derived there from and the rest are my humble
submission before this Humble Tribunal. I have not suppressed any material
fact.

And I sign this verification this 28th day of January 2008 at ---

Vinay Lal
DEPONENT

(Vinay Lal)

Colonel

Commanding Officer

Appx 100 cases returned DEPT. of
letter 1/5 105 A de

6/

No 11013/2/86-E.II(B)
Govt of India,
Ministry of Finance,
(Department of Expenditure),
New Delhi,
the 23 September 1986.

~~CONFIDENTIAL - SECURITY INFORMATION~~

Subject: REIMBURSEMENT OF THE MONTHLY PAY AND HOUSING
ALLOWANCES OF GOVT EMPLOYEES TO GRANT OF HOUSING
ALLOWANCE (CITY) AND HOUSE RENT ALLOWANCE TO
CENTRAL GOVT EMPLOYEES.

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

- 1550

गुनाहादी न्यायपीठ
Gunaahadi Bench

The undersigned is directed to say that, consequent on the decision taken by the Govt on the recommendations of the Fourth Pay Commission relating to the above mentioned allowances vide this Min's Resolution No 14(1)/L/ to dt 13 Sep 66, the President is pleased to decide that in modification of this Ministry's OM No F-2(37)-E.11(D)/ dated 27.11.1965 as amended from time to time, Compensatory (city) and House Rent Allowances to Central Govt employees shall be admissible at the following rates :-

(1) COMPLEMENTARY (CITY) ALLOWANCE

Pay Range Basic pay	Amount in OCA in class of Cities (Rs pm)		
	A	B1	B2
Below Rs 950/-	30	25	20
Rs 950 and above but below Rs 1500/-	45	35	20
Rs 1500/- and above but below Rs 2000/-	75	50	20
Rs 2000/- and above	100	75	20

Note :- For 14 special localities where CCA at the rate applicable to B-2 city are being paid, fresh orders will be issued separately

(1.) HOUSE RENT ALLOWANCE

Type of accommodations to which entitled	Pay range in revised scales of pay for entitlement	Amount of HRA payable in Rs pm)
1.1	750-949	01-01
1.2	950-1499	01-01
1.3	1500-2799	01-01
1.4	2800-3599	01-01

certified to be true
copy
Usha Das
Addl Secy
04/02/08

7-

20

872

At above rates shall be paid to all employees (either those provided with Govt owned/hired accommodation) without any of them to produce rent receipts. These employees shall also be required to furnish a certificate to the effect that they are incurring some expenditure on rent/contributing towards rent. HRA at above rates shall also be paid to Govt employees living in their own houses subject to their furnishing certificate that they are paying/contributing towards house property tax or maintenance of the house.

केन्द्रीय प्रशासनिक अपिचरण
Central Administrative Tribunal

Where HRA at 15% of pay has been allowed under special orders, the same shall be given as admissible in A, B-1 and B-2 class cities. In other cases covered by special order, HRA shall be admissible at the rate in 'C' class cities. In both these cases there shall be no super pay limit for payment of HRA.

मुद्राहस्ताक्षर
Mudra Bhandh

The other conditions at present applicable for grant of HRA in cases of sharing of accommodation and other categories shall continue to be applicable.

For the purpose of these orders, will be 'pay' as defined in S.A.9(21)(a)(i). In the case of persons who continue to draw pay in the scales of pay which prevailed prior to 01.01.86 it will include, in addition to pay in the pre-revised scales, dearness pay, dearness allowance, and dearness allowance, and the DA and Dearness Relief appropriate to that pay, admissible under orders in existence on 31-12-85.

These orders shall be effective from 01-10-86. For the period from 1.1.86, the above allowance will be drawn at the existing rates on their notional pay in the pre-revised scale.

These orders will apply to civilian employees of the Central Govt belonging to Gp 'A', 'C' & 'D' only. The orders will also apply to the Gp 'B', 'C' & 'D' Civilian employees drawn from the Defence Service Estimates. In regard to Armed Forces personnel and Railway employees, separate orders will be issued by the Min of Def and Deptt of Railway respectively.

In so far as the persons serving in the Indian Audit and Accounts Deptt are concerned, this order is subject to the sanction of the Comptroller and Auditor General of India.

And version of the xxx order is enclosed.

ed/- x x x x x x x

certified to be true copy
Usha Das.
Addl Secy
04/02/08

No 4(2)/99-D(Civ.I)
Government of India
Ministry of Defence

New Delhi, the 8 Sep 99

The Chief of the Army Staff

Subject : Field Service Concessions to Defence Civilians in Defined Operational Areas.

Sir,

1. I am directed to refer to Government of India, Ministry of Defence letter No R/37269/AG/PS-3(a)/165/D(Pay/Services) dated 31.1.95 as amended vide this Ministry's Corrigendum No B/37269/AG/PS-3(a)/730/D(Pay/Services) dated 17.4.95 and No B/37269/AG/PS3(a)/1862/D(Pay/Services) dt 12.9.95 regarding Field Service Concessions/Modified Field Service Concessions in the newly defined Field Areas.
2. The defence civilian employees serving in the Modified Field Areas are entitled to concessions enumerated in appx 'B' to Govt of India, Min of Defence letter No A/25761/AG/PS3(b)/146-S/2/D(Pay/Services) dt 02.3.68. The matter regarding facilities/concessions of accommodation in respect of Defence civilians serving in the modified Field Areas has been under consideration in this Ministry. The President is pleased to decide that Defence Civilians serving in the Modified Areas who are not retaining Govt accommodation at old place duty station with reference to Govt of India, Ministry of Defence letter ibid dt 02.3.68 and are not also provided with Govt accommodation in the newly defined Modified Area, are entitled to draw HRA applicable for the place of their posting in the Modified Field Area subject to the conditions prescribed in Govt of India, Min of Finance O.Mo No F.2(37)-E-II(1)/64 dt 27 Nov 65. If, however, any modified Field Area is located in Kashmir Valley then the package announced by the Govt of India and circulated vide Ministry of Defence No 11(4)/90/D(Civ-II) dated 29.4.1998 and as extended from time to time or the concessions of Modified Field Area, whichever is more beneficial would be applicable.
3. This concession will be admissible from the date of issue this letter.
4. This is issued with the approval of Ministry of Finance vide their I.D. No 2(25)/99-E.II(B) dt 12.5.99 and with the concurrence of the Finance Division/AG of this Ministry vide their I.D. No 376/AG/PB dt 03.8.99.

CTC

(Vinay Lal)
Colonel
Commanding Officer

Sd/xxxxxx

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal
Sd/xxxxxx - 4550
मुंबई बेंच Mumbai Bench

9- Annexure - 3

Copy of CDA Patna, DO letter No PA/1/017/-XIV dt 31 Jul 2001.

(2) 64

This is regarding payment of HRA and compensatory Modified Field Area allowance the civilians posted in newly defined Field Areas.

In this connection I am to state that in terms of para 2 of Govt of India, Min of Defence letter No 4(2)/99D(civ-1) dt 08 Sep 99, the Defence Civilians employed in Modified Field Areas are entitled to HRA provided they are not retaining Govt accommodations at peace duty station with reference to Govt of India, Min of Defence letter ibid dt 02 Mar 68 and are not also provided with Govt Accommodation in the newly defined Field Area. Now it has been observed by our HQrs Office (CGDA) that the order of Min of defence does not contemplate payment of HRA at the duty station in Modified Field Areas prior to 08 Sep 99. It has also been pointed out by our HQrs. office that HRA applicable in unclassified areas has been admitted in certain areas in terms of Min of Fin letter No 13-02-B6-E-II(B) dt 23 Sep 86. Therefore the payments of HRA prior to 08 Sep 99 (i.e from 01 Oct 86 to 07 Sep 99) have been viewed as irregular.

In this connection the following information is to be furnished by the units/formations located in Modified Field Area in order to work out over payments.

- (i) The number of employees who have been admitted HRA w.e.f 01 Oct 86 and subsequent dates depending upon the date of posting to modified Field areas who have not been retaining the family accommodation at the old duty station.
- (ii) The number of employees who have been admitted HRA w.e.f 01 Oct 86 and subsequent dates depending upon that date of posting to Modified Field Areas who have ~~not~~ retained the family accommodation at the old duty station.

It is further added that compensatory Modified Field Area Allowance (CMFAA) has been paid to Defence Civilians serving in Modified Field Area which have also been viewed as irregular as the provisions of Govt of India, Min of Def letter No 37269/AC/PS3(a)/90 (Pay/Services) dt 13 Jan 94 was only applicable for Army Personnel. As an instant case the unauthorised payments of Modified Filed Area Allowance which was made to the civilians of GE 867 EWS have come to our notice.

In view of foregoing, I would request you to get both the cases examined in detail by your HQ are issue necessary instructions to concerned units/formations to work out the details of the amounts paid to Defence Civilians on account of HRA prior to 08 Sep 99 (ie, 01 Oct 86 to 07 Sep 99) and also compensatory Modified Field Area Allowance paid after 13 Jan 94 and initiate recovery action after issue of show cause notice to the individual concerned. It is also stated that this office is not in a

पे.टी. प्र.पे.टी.
Central Accounts
पे.टी. प्र.पे.टी.
पे.टी. प्र.पे.टी.

गुवाहाटी स्थायी
Bench

CTC

(Vinay Lal)
Colonel

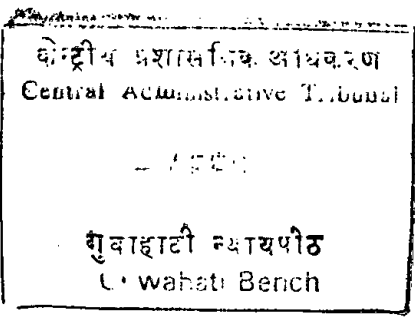
Commanding Officer

Sd/- X X X X X

HQ 5 Mtn Div
C/O 99 APD

3

18 Oct 2001



7.337A2

505 ASC Bn
121 MH
5 Mtn BDU
238 Transit Camp
GE 559 EMS
384 Coy ASC (Sup)
482 Coy ASC (Sup)
Stn HQ Tenga

PAYMENT OF HRA AND COMPENSATORY MOD FD AREA ALICES
TO DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS

1. A copy of CDA Patna, DO letter No PA/1/017/-XIV dt 31 Jul 2001 on the subject is fwd herewith.
2. It has been intimated by CDA Patna that def civs posted to fd areas are entitled to HRA provided they are not retaining accn at previous duty stn and not provided with Govt accn in the newly defined fd areas. Vide SOI, MOD letter 4(2)/99-D(Civ-I) dt 08 Sep 99 the provisions of payment of HRA to def civ employees was wef 08 Sep 99. However, on a number of cases def civs have been paid HRA from 01 Oct 86 to 07 Sep 99 which is irregular.
3. In this connection, the following info is to be furnished by the units/fms loc in mod fd areas in order to work out over payments :-
 - (a) The number of employees who have been admitted HRA wef 01 Oct 86 and subsequent dates depending upon the date of posting to mod fd area, who have not been retaining the family accn at the old duty stn.
 - (b) The number of employees who have been admitted HRA wef 01 Oct 86 and subsequent dates depending upon the date of posting to mod fd areas, who have retained the family accn at the old duty stn.
4. Compensatory mod fd area alices (CMFAA) has been paid to def civs serving in mod fd area which has also been viewed as irregular as the provisions of SOI, MOD letter No 37269/AB/PS-3(a)/90(Pay/Services) dt 13 Jan 94 were only applicable to Army pers.
5. In view of the foregoing, you are requested to examine both the cases in detail and issue necessary instrs to concerned units/fms to work out the details of the amount paid to def civs on acct of HRA prior to 08 Sep 99 (ie, 01 Oct 86 to 07 Sep 99) and also compensatory mod fd area alices paid after 13 Jan 94 and initiate recovery action after issue of show cause notice to the indl concerned.
6. Please fwd a feed back by 22 Oct 2001 positively.

CRC

[Signature]

(Vinay Lal)

Colonel
Commanding Officer

Enclos : (As above)

[Signature]
(Vineendra Rawat)
Lt Col
AAC
for Col Adm

181 MH

IL-

Annexure-5

3/A2

HQ 5 Mtn Div
c/o 99 APO

15 Nov 2001

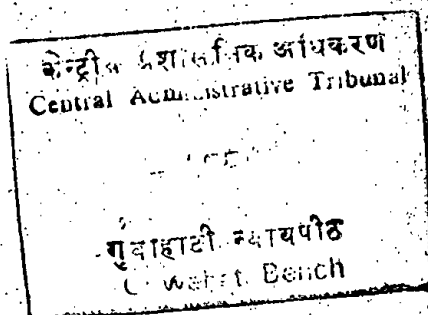
(5)

505 ASC Bn
482 Coy ASC (Sup)
181 Mil Hosp
GE 859 EWS

PAYMENT OF HRA AND COMPENSATORY MOD FD AREA ALLCES
TO DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS

1. Ref our letter No 7703/A2 dt 16 Oct 2001 and your replies thereon.
2. You are requested to fwd the details as per appx att to this letter by 17 Nov 2001.

Encl : As above.



(Virendra Rawat)
Lt Col
AAG
for Col Adm

CTC

(Vinay Lal)
Colonel
Commanding Officer

ਯੁਗਾਦਾਈ ਨਾਥਪੀਠ
ਓ.ਐਚ.ਓ. ਡਿਪਾਰਟਮੈਂਟ

PRICE TO 08 SEP 1999

Individual with particularers to whom duty station PRRA was paid prior to 08.09.99

place from 1 period from where posted which such payment is being made

Whether individual
is retaining Govt
accommodation at
old duty station in
peace area.

Remarks

(Vipay Lal)
Colonel
Commanding Officer

711 1st/2001

HQ 5 Mtn Div 'A'
C/O 99 APO

13- 181 Military Hospital
C/O 99 APO

17 Nov 2001

PAYMENT OF HRA AND COMPENSATORY MCD FD AREA ALICES
TO DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS

1. Ref your HQ Letter No 7703/A2 dated 15 Nov. 2001.
2. The requisite info on the above subject as asked for vide your HQ letter under ref is fwd herewith as per Appx att to this letter for your further necessary action please.

[Signature]
(HC Bandhu)
Lt Col
Adm Officer
For CO

Encls : One only.

Lo's ✓

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

गुवाहाटी न्यायपीठ
Guwahati Bench

[Signature]
(Viney L.)
Colonel
Commanding Officer

**PAYMENT OF DUTY STATION HRA MADE TO DEFENCE CIVILIAN
IN MODIFIED FIELD AREA PRIOR TO 08 SEP 1999**

S.No	Name of unit	Individual with part- iculars to whom duty station HRA was paid prior to 08.09.99	Place from where pos- ted	Period from which such payment is being paid	Whether individual is retaining Govt accommodation at old duty station in peace area	Total amount of HRA paid upto 7.9.99	Remarks
1.	181 MH, C/O 99 APC	W/SAH SMT P HAZARIKA	155 BH	01 Oct 86	NO	13,762.00	
2.	-do-	-do- SMT B LAMA	-do-	-do-	-do-	13,762.00	
3.	-do-	-do- SMT M BORUAH	-do-	-do-	-do-	10,738.00	
4.	-do-	F/SWPR SMT R DEVI	-do-	-do-	-do-	10,646.00	
5.	-do-	-do- SMT KIRAN BCRA	-do-	-do-	-do-	10,426.00	
6.	-do-	-do- SMT MM THAPA	-do-	-do-	-do-	10,426.00	
7.	-do-	XXXX CHOWK SHRI B SINGH	Locally recruited	-do-	-do-	10,271.00	
8.	-do-	-do- SHRI PK GOPI	-do-	-do-	-	10,271.00	
9.	-do-	-do- SHRI KC GANGULLY	-do-	-do-	-	10,271.00	
10.	-do-	-do- SHRI AVTAR SINGH	-do-	-do-	-	10,271.00	
11.	-do-	-do- SHRI CB MISHRA	-do-	-do-	-	10,271.00	
12.	-do-	-do- SHRI DC BCRA	-do-	-do-	-	10,271.00	
13.	-do-	MALI SHRI JB CHETTRY	-do-	-do-	-	10,271.00	
14.	-do-	MAZ SHRI PC BATH	-do-	-do-	-	10,271.00	
15.	-do-	CHOWK SHRI ANAND BCRA	-do-	-do-	-	10,271.00	
16.	-do-	COOK SHRI DAMAR BAHADUR	-do-	-do-	-	10,482.00	
17.	-do-	-do- SHRI SAJAL PAUL	-do-	-do-	-	10,482.00	
18.	XXXX -do-	BARBER SHRI N THAKUR	-do-	-do-	-	10,482.00	
19.	-do-	-do- SHRI NK THAKUR	-do-	-do-	-	10,482.00	
20.	-do-	W/MAN SHRI S IV PRASAD	-do-	-do-	-	10,482.00	
21.	-do-	-do- SHRI MD FALAL	-do-	-do-	-	10,482.00	
22.	-do-	MSGR SHRI NURUP LAMA	-do-	01 MAY 92	-	7,664.00	
23.	-do-	-do- SHRI THONG JUNG	-do-	-do-	-	7,664.00	
24.	-do-	CHOWK SHRI SANGE KHANDU	-do-	-do-	-	7,664.00	
25.	-do-	-do- SHRI TASHI PHUNTSO	-do-	-do-	-	7,664.00	
26.	-do-	MAEOSHRI JAPOH RANJE	-do-	-do-	-	7,664.00	
27.	-do-	-do- SHRI NAWANG TSERING	-do-	-do-	-	7,664.00	
28.	-do-	MM F/SWPR SMT TE KHOCHILU	-do-	-do-	-	7,664.00	
29.	-do-	-do- SMT KHANDAMU	-do-	-do-	-	7,664.00	
30.	-do-	-do- MISS RINCHIN	-do-	-do-	-	7,664.00	
31.	-do-	COOK SHRI DAWA MERAKPA	-do-	-do-	-	7,880.00	
32.	-do-	W/SAH SMT KONJU DRCMA	-do-	-do-	-	7,880.00	
33.	-do-	-do- SMT LOBSANG	-do-	-do-	-	7,880.00	
34.	-do-	-do- SMT PASSANG	-do-	-do-	-	7,880.00	
35.	-do-	-do- SMT T REMA	-do-	-do-	-	7,880.00	
36.	-do-	SFWL SHRI GOVIND BAHADUR	-do-	01 JAN 97	-	4,244.00	
37.	-do-	-do- SHRI MK BORA	-do-	-do-	-	4,244.00	
38.	-do-	W/MAN SHRI UPENDER KUMAR	-do-	-do-	-	4,276.00	
39.	-do-	W/SAH SMT RUPALI	-do-	-do-	-	4,276.00	
40.	-do-	-do- MISS BALRANA RAI	-do-	-do-	-	4,276.00	
41.	-do-	LDC DILIP HAZARIKA	-do-	01 FEB 97	-	4,515.00	
42.	-do-	W/SAH MISS GOURI KUMARI	-do-	01 DEC 97	-	2,841.00	
43.	-do-	W/MAN SHRI ROOP NARAYAN	-do-	-do-	-	2,841.00	
44.	-do-	CARPENTER SHRI MANOJ KUMAR	-do-	01 JUN 98	-	2,148.00	
TOTAL						67,128.00	

CTC

(Vinay Lal)
Colonel
Commanding Officer

केन्द्रीय प्रशासनिक अद्वितीय
Central Administrative Tribunal

गुवाहाटी न्यायपीठ
Guwahati Bench

353/PK/M-3

To: IMH
C/O 99 APO

HQ 5 Mtn Div
Pin: 908405
C/O 99 APO

17 Apr 2005

**PAYMENT OF FIELD SERVICE CONCESSION
(DUTY STATION HRA) TO DEFENCE CIVIL**

A copy of CDA Guwahati letter No PAY/6/HRA/CCA/V dated 07 Mar 05 on the above subject is fwd herewith for your further necessary action.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- 15 FEB

सुबहादी न्यायपीठ
Sudhadi Bench

Encls : As above.

(TS Kamakrishnan)
Major
DADH
for ADMS

Copy of CDA Guwahati letter No PAY/6/HRA/CCA/V dated 07 Mar 05.

/ AS ABOVE /

Payment of HRA to Defence Civilians serving in operational Areas and even to those retaining Govt. accommodation at old peace duty stations since Oct' 1986 is not in keeping with the Govt. orders. The matter has been examined in detail in MOD (FIN) and Ministry of Finance. Necessary instructions may please be issued to all concerned to stop payment of HRA to those Defence Civilians who are serving in Operational Areas and retaining Govt. accommodation at old peace duty station immediately.

✓ However the following information may please be furnished on priority for taking up the matter with MOD by CGDA, New Delhi.

1. No. of units involved.
2. No. of individuals who have been admitted HRA prior to 08.09.99 in Modified Field Areas.
3. Total financial Implication in this regard.
4. Period of overpayment on a/c of HRA in Modified Field Areas.
5. Views whether recovery of HRA can be made from the salaries of the individuals under the order of CFA.

An immediate reply would be highly appreciated.

CTC

(Vinay Lal)
Colonel

Commanding Officer

Sd/- x x x x x
(C.ZOTHANKHUMA)
Jt. CONTROLLER

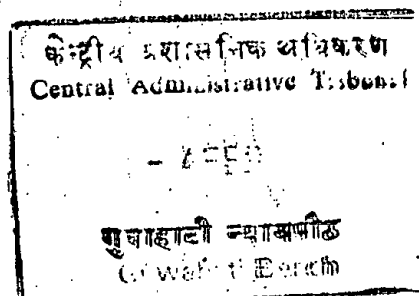
91 May 05

Est/2005

HQ 5 Men Div (Med)
Pin : 908405
C/O 99 APO

PAYMENT OF FIELD SERVICE COMMISSION
(DUTY STATION HRA) TO DEBBIE CIVIL

1. Ref your HQ letter No 3537/R/M-3 dt 17 Apr 2005.
2. The requisite info on the subject as asked vide your letter under ref is submitted herewith/for your further action please.
as under
 - (a) No of units involved - One (181 MH, S/C 99 APO)
 - (b) No of individuals who have been admitted HRA - Forty four prior to 08.09.99 in Modified field areas.
 - (c) Total financial implication in this regard - Rs.3,67,128/- (Rupees three lakhs sixty seven thousand one hundred twenty eight only).
 - (d) Period of overpayment on a/c of HRA in - 01 Oct 86 to 07 Sep 99. in Modified field areas.
 - (e) Views recovery of HRA can be made - Yes from the salaries of the individuals under the order of CPA.



(MR Rains)
Major
Adj Officer
Box 66

(Vinay Lal)
Colonel
Commanding Officer

File in Court on 29.8.08
Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::::::::: GUWAHATI

FILED BY

Smti Madhumati Thapa

Applicant No. 1

through [Signature]

Advocate 22

IN THE MATTER OF :

O.A. No. ²⁰⁴240 of 2007

Smti Madhumati Thapa
& Others

. . . Applicants

- Versus -

The Union of India & Ors.

. . . Respondents

- AND -

IN THE MATTER OF :

Rejoinder filed by the
Applicants to the written
statement filed by the
Respondent No. 7.

The humble Applicants submit this Rejoinder as follows:

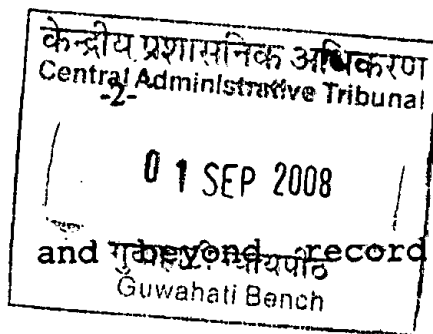
1. That with regard to the statement made in paragraph 1 (a) of the written statement the Applicants have no comment to offer.

2. That with regard to the statements made in paragraph 1 (b) to 1 (e) of the written statement the Applicants beg to state that the same are not correct and not sustainable in the eye of law. Moreover, those are false, irrelevant and also misleading to this Hon'ble Tribunal.

3. That with regard to the statements made in paragraph 2 of the written statement the Applicants beg

Recd
M.C. Mf 29/8/08

MA P H C
(Madhumati Thapa)



to offer no comment and beyond record nothing is admitted.

4. That with regard to the statement made in paragraph 3 of the written statement the Applicants beg to state that the Respondents themselves had paid the House Rent Allowance to the Applicants from 01.01.1986 to 07.09.1999. The Applicants reiterate that they have not taken the House Rent prior to 08.99 from the Respondents by any back door policy. The Respondents have themselves paid the House Rent and now the Respondents cannot take the stand that there is no authority of admissibility of House Rent to the Applicants. The Applicants cannot be held responsible for any lapse or negligence on the part of the Respondents in payment of House Rent Allowance to the Applicants.

5. That with regard to the statement made in paragraph 4, 5 & 6 of the written statement the Applicants beg to state that the same are matters of record and beyond nothing is admitted.

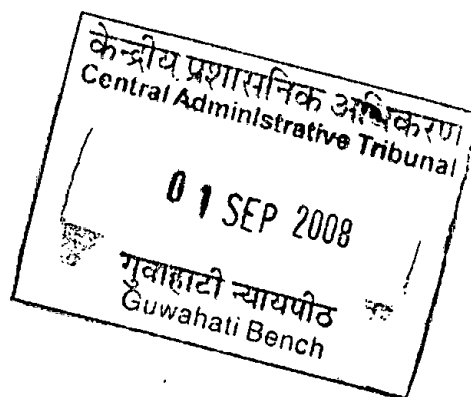
6. That with regard to the statement made in paragraph 7 to 11 of the written statement the Applicants beg to state that the Respondents had took the initiative to recover the House Rent from the Applicants for the period w.e.f. 01.10.1986 to 07.09.1999 in pursuance to the letter dated 31.07.2001 issued by the C.D.A., Patna i.e. Respondent No.5. But the Respondents themselves took 6 (six) years to issue the impugned order No.Pay/S/HRA/CCA/VI dated 02.04.2007 and dated 22.05.2007 to recover the House Rent from the Applicants without issuing any show cause or opportunity to the Applicants to defend themselves. The Applicants cannot be held responsible since they have no hand in the matter of sanction or discontinuation of

MAPHO
(Naethumati Thapa)

the said House Rent Allowance. The Applicants cannot be suffered if any mistakes committed by the Respondents in granting House Rent Allowance to them.

It is also humbly submit that in Shyam Babu Verma & Others -Vs- The Union of India & Others (1994) 2 SCC 521 where the Petitioner had been paid higher pay scale erroneously due to no fault of theirs, the Hon'ble Supreme Court observed that it shall only be just and proper not to recover any excess amount already paid to them.

Therefore, the written statement filed by the Respondents is wholly bereft of substance and no credence ought to be given to it. Thus, in view of the abject failure of the Respondents to refute the contentions, averments, questions of law and grounds made by the Applicants in the Original Application filed by the Applicants deserved to be allowed by this Hon'ble Tribunal.



719740 (Mashumant Thapra)



V E R I F I C A T I O N

I, Smti Madhumati Thapa, P. No.484679, Female Sweeper, Office of the Commanding Officer, 181 Military Hospital, C/o 99 APO do hereby solemnly verify that the statements made in paragraph nos. 1, 2, 3, 4, 5, 6 (Partly) — above rejoinder are true to my knowledge and rests are my humble submissions before this Hon'ble Tribunal.

And I sign this Verification on this the 29th day of August 2008 at Guwahati.

MADHU
(Madhumati Thapa)

D E C L A R A N T